

ILLINOIS POLLUTION CONTROL BOARD
January 19, 1989

In the Matter of:)
)
Procedural Rules Revision)
35 Ill. Adm. Code) R88-5 (A)
101, 106 (Subpart G), and 107)

In the Matter of:)
)
Procedural Rules Revision)
35 Ill. Adm. Code 102 and 106) R88-5 (B)
(Subparts D, E, & F))

PROPOSED RULE. SECOND NOTICE.

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on its own motion. On September 8, 1988, the Board proposed for first notice revisions of some of its procedural rules. This docket includes proposed new general rules (35 Ill. Adm. Code 101), new rules covering regulatory proceedings (35 Ill. Adm. Code 102), and new rules for adjusted standards proceedings (35 Ill. Adm. Code 106). The Board has proposed repeal of existing Parts 101, 102, and 107. Part 107 currently contains rules pertaining to sanctions. Rules on sanctions have been proposed as part of the new Part 101 general rules. An opinion supporting the proposed rules was adopted on September 22, 1988. Merit hearings were held on October 13, 1988 in Springfield, and on October 21, 1988 in Chicago. The first notice comment period closed on Monday, November 7, 1988.

Today's order takes two actions. First, this docket will be split into two dockets: R88-5(A) and R88-5(B). R88-5(A) will include the proposed rules in Part 101 (general provisions), the proposed rules in Subpart G of Part 106 (adjusted standards proceedings), and Part 107. Docket R88-5(B) will include the proposed rules for regulatory proceedings (Part 102), and revisions to Subparts D, E, and F of Part 106. (Please note that these Subparts will be changed only to update references to other Parts.) This split of the docket is done to allow Parts 101, 106 (Subpart G), and 107 to proceed to second notice while the Board further considers the comments on Part 102 received at hearing and during the first notice comment period. The Board anticipates taking further action on Part 102 in the near future.

Second, the Board today proposes for second notice the rules in R88-5(A). Pursuant to the Board's October 20, 1988 order,

this second notice order will be withheld from submission to the Joint Committee on Administrative Rules (JCAR) to allow interested persons to comment on the rules. All comments must be received at the Board's Chicago office by 5:00 p.m. on Wednesday, February 8, 1989. If the Board deems it necessary after consideration of any comments received during this period, the Board will adopt a second second notice order. An opinion supporting the second notice order will be adopted at that time.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

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AUTHORITY: Authorized by Section 26 of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111¹/₂, par. 1026); and implementing Sections 5, 7.1, 7.2, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40 and 41 of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111¹/₂, pars, 1005, 1007.1, 1007.2, 1027, 1028, 1029, 1031, 1032, 1033, 1035, 1036, 1037, 1038, 1040 and 1041); and Section 4 of "An Act in relation to natural resources, research, data collection and environmental studies," approved and effective July 14, 1978, as amended (Ill. Rev. Stat. 1987, ch. 96¹/₂ par. 7404).

SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part repealed , new Part adopted in R88-5 at ___ Ill. Reg. _____ effective _____.

NOTE: Capitalization denotes statutory language.

SUBPART A: GENERAL PROVISIONS

Section 101.100 Applicability

- a) This Part governs the practices and procedures of the Pollution Control Board, and contains rules which are applicable to all proceedings conducted by the Board. This Part should be read in conjunction with 35 Ill. Adm. Code 102 through 120, which contain rules applicable to specific proceedings conducted by the Board. The provisions of this Part apply to 35 Ill. Adm. Code 102 through 120; however, in the event of a conflict between the rules of this Part and subsequent Parts, the more specific requirement of the subsequent Part applies.
- b) The provisions of the Code of Civil Procedure (Ill. Rev. Stat. 1987, ch. 110, par. 1-101 et seq.) and the Illinois Supreme Court Rules (Ill. Rev. Stat. 1987, ch. 110A, par. 1 et seq.) do not expressly apply to proceedings before the Board. However, in any absence of a specific provision in these procedural rules to govern a particular situation, the parties or participants may argue that a particular provision of the Code of Civil Procedure or the Illinois Supreme

Court Rules provides guidance for the Board or hearing officer.

- c) The provisions contained in this Part and in 35 Ill. Adm. Code 102 through 120 are in addition to the provisions of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1987, ch. 127, par. 1001 et seq.), unless otherwise provided by the Act.

Section 101.101 Definitions

The definitions of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1001 et seq.) apply to this Part unless otherwise provided. The following definitions also apply to this Part:

"Act" means the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1001 et seq.)

"Agency" means the Illinois Environmental Protection Agency.

"APA" means the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1987, ch. 127, par. 1001 et seq.)

"Attorney General" means the Office of the Attorney General of the State of Illinois.

"Board" means the Illinois Pollution Control Board.

"Chairman" means the Chairman of the Board.

"Clean Air Act" means the federal Clean Air Act (42 U.S.C. 7401 et seq. (1986)).

"Clean Water Act" means the federal Clean Water Act (35 U.S.C. 1251 et seq. (1986)).

"Clerk" means the Clerk of the Board.

"Contested case" means an adjudicatory proceeding, including but not limited to enforcement, variance, permit appeal, adjusted standard, and administrative citation proceedings, but not including regulatory, quasi-legislative, informational, or similar proceedings.

"Document" means pleading, notice, motion, affidavit, memorandum, brief, petition, or other paper or combination of papers required or permitted to be filed.

"DNS" means the Illinois Department of Nuclear Safety.

"ENR" means the Illinois Department of Energy and Natural Resources.

"Evidence" means a paper, drawing, map, chart, report, study, or other tangible thing produced and submitted at hearing.

"JCAR" means the Joint Committee on Administrative Rules.

"Material" means relating to any substantive issue that is of consequence to the determination of a proceeding.

"Participant" means any person, not including the Board or its staff, who takes part in a regulatory or other quasi-legislative proceeding before the Board. A person becomes a participant in any of several ways, including, but not limited to, filing a comment, being added to the notice list of a particular proceeding, or testifying at hearing.

"Party" means a person authorized by the Act to bring, defend, or intervene in a contested case before the Board.

"Person" means any entity defined in Section 3.26 of the Act, including but not limited to any individual, partnership, company, corporation, political subdivision, or state agency.

"Procedural rules" means the Board's procedural rules, contained in 35 Ill. Adm. Code 101 through 120.

"Registered agent" means a person registered with the Secretary of State for the purpose of accepting service of notices for any entity, or a person otherwise authorized in writing as an agent for the purpose of accepting service of notices for that entity.

"Relevant" means having any tendency to make the existence of any fact that is of consequence to the determination of the proceeding more probable or less probable than it would be without that information.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.).

"SDWA" means the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.).

"Site-specific" means a proposed or adopted regulation, not of general applicability, which applies only to a specific facility or geographic site.

"USEPA" means the United States Environmental Protection Agency.

Section 101.102 Filing Of Documents

- a) Documents and requests permitted or required to be filed with the Board or its Clerk shall be addressed and mailed to or filed with the Clerk at 100 West Randolph Street, State of Illinois Center, Suite 11-500, Chicago, Illinois 60601. Filing, inspection, and copying of documents may be done in the Clerk's office from 8:30 a.m. to 4:30 p.m. Monday through Friday, except for national and state legal holidays. The Board offices are open from 8:30 a.m. to 5:00 p.m. Monday through Friday, except for national and state legal holidays.
- b) Filings received after 4:30 p.m. will be date-stamped the following business day.
- c) Documents may be filed with the Clerk by certified, registered, or First Class mail, by messenger service, or personally at the Board's Chicago office. Filing by electronic transmission, such as telefax machine or computer modem, will not be accepted, except when specifically requested by the Board.
- d) Initiation of any proceeding before the Board may only be made by filing the necessary document(s) with the Clerk. Such initial document(s) shall be deemed filed only when date-stamped by the Clerk. After initiation of a proceeding, the time of filing of documents will be the date on which they are date-stamped by the Clerk, unless date-stamped after any due date. If received after any due date, the time of mailing shall be deemed the time of filing. Proof of mailing shall be made pursuant to Section 101.143.
- e) Notwithstanding subsection (d), the Board or the hearing officer may accelerate a filing schedule to prevent undue delay, upon written notice to the participants or parties.

Section 101.103 Form Of Documents

- a) Documents shall clearly show the title of the proceeding in which they are filed. Appendix A of this Part sets forth examples of proper captions. Documents shall bear a heading which clearly describes the nature of the relief sought, such as, but not limited to "Petition for Amendment to Regulation," "Complaint," "Petition for Variance," "Petition for Review," "Motion," or "Public Comment."

- b) Except as otherwise provided, the original and nine (9) copies of all documents shall be filed with the Clerk. Only the original and four (4) copies of any discovery motion, deposition, interrogatory, answer to interrogatory, or subpoena need be filed with the Clerk.
- c) After the filing of the initial document in a proceeding, all filings, including exhibits, shall include the Board docket number for the proceeding in which the item is to be filed. If the filing is a document, the docket number shall appear on the first page of the filing. For filings which are not documents, the docket number shall appear on a readily visible portion of the filing.
- d) Documents, excluding exhibits, shall be typewritten or reproduced from typewritten copy and double-spaced on unglazed white paper of greater than 12 pound weight and measuring 8" x 10 1/2" or 8 1/2" x 11". Reproductions may be made by any process that produces legible black-on-white copies. All documents shall be fastened on the left side or in the upper left hand corner. The left margin of each page shall be at least 1 1/2 inches and the right margin at least one inch.
- e) The requirements of subsections (b), (c), and (d) may be waived by the Board upon written request. A request for a filing waiver shall be presented to the Board in the form of a motion accompanied by affidavits necessary to verify any factual assertions contained in the motion. If the Board finds that compliance with the filing requirements would impose an undue burden, the Board will grant the motion.
- f) Exhibits, where possible, shall be reduced to conform to the size requirements of subsection (d). However, one non-conforming copy may be filed with the Clerk's office.
- g) The original of each document filed shall be signed by the party or by its authorized representative or attorney. All copies submitted for filing shall be made from the signed original. All documents shall bear the business address and telephone number of the attorney filing the document, or of the party who appears on his or her own behalf. The Clerk will refuse to accept for filing any document which does not comply with this subsection.
- h) Except as otherwise provided by Sections 1 through 4 of "AN ACT in relation to the reproduction of public records on film and the destruction of records so

reproduced" (Ill. Rev. Stat. 1987, ch. 116, pars. 35-38), or by leave of the Board, documents on microfiche are not acceptable for filing.

- i) The Clerk may refer all filings which do not conform with the requirements of this Section to the Board for review.

Section 101.104 Length Of Briefs

- a) No brief in support of or in opposition to any motion shall exceed 15 pages without prior approval of the Board or hearing officer. This limit does not include appendices containing relevant material.
- b) No post-hearing brief or response brief, brief submitted in response to a Board order, or public comment submitted in lieu of a brief shall exceed 50 pages without prior approval of the Board or hearing officer. No reply brief shall exceed 25 pages. These limits do not include appendices containing relevant material.
- c) In considering any motion to exceed these limits, the Board or the hearing officer will take into account factors such as, but not limited to, the complexity of the proceeding, the number of issues involved, and the length of the record.

Section 101.105 Waivers

A waiver of a deadline for final Board action, as specified in Sections 38, 40, 40.1 and 41 of the Act, shall be filed as a separate document. The waiver shall be clearly titled as such, identify the proceeding by name and docket number, and be signed by the party or by his authorized representative or attorney. The waiver shall be an open waiver or a waiver until a calendar date certain. A contingent waiver is not acceptable.

Section 101.106 Incorporation Of Prior Proceedings

- a) Upon the separate written request of any person or on its own initiative, the Board or hearing officer may incorporate materials from the record of another Board docket into any proceeding. The person seeking incorporation shall file with the Board four copies of the material to be incorporated. The person seeking incorporation shall demonstrate to the Board or the hearing officer that the material to be incorporated is relevant to the proceeding. Notice of the request shall be given to all identified participants or parties by the person seeking incorporation.

- b) The Board will give the incorporated matter the appropriate weight in light of the following factors: the standard of evidence under which the material was previously presented to the Board; the present purpose for incorporating the material; and the past and current opportunity for cross-examination of the matters asserted within the incorporated material.

Section 101.107 Appearances And Withdrawals

- a) Any person entitled to participate in Board proceedings shall appear as follows:
 - 1) A natural person on his or her own behalf or by an attorney at law licensed and registered to practice in the State of Illinois, or both.
 - 2) A corporation, in an enforcement case pursuant to 35 Ill. Adm. Code 103, by an attorney at law licensed and registered to practice in the State of Illinois. In all other proceedings, a corporation may appear through any officer, employee, or representative, or by an attorney at law licensed and registered to practice in the State of Illinois or both.
 - 3) Any other person, including a municipality, through any officer, employee, or representative, or by an attorney licensed and registered to practice in the State of Illinois, or both.
- b) Attorneys not licensed and registered to practice in the State of Illinois may request to appear on a particular matter on motion filed with the Board.
- c) An attorney appearing in a representative capacity shall file a written notice of appearance with the Clerk, together with proof of service and notice of filing on all participants or their representative. A sample appearance form appears in Appendix B of this Part.
- d) An attorney who has appeared in a representative capacity and who wishes to withdraw from that representation shall file a notice of withdrawal with the Clerk, together with proof of service and notice of filing on all participants or their representative. A sample notice of withdrawal appears in Appendix C of this Part.

Section 101.108 Substitution Of Attorneys

Any attorney who substitutes for an attorney of record shall file a written appearance pursuant to Section 101.107(c). That

appearance shall identify the attorney for whom the substitution is made.

Section 101.109 Computation Of Time

Computation of any period of time prescribed by this Chapter or the Act shall begin with the first calendar day following the day on which the act, event or development occurs and shall run until the end of the last day, or the next business day if the last day is a Saturday, Sunday or national or state legal holiday.

SUBPART B: FILING AND PHOTOCOPYING FEES

Section 101.120 Filing Fees

- a) A person filing an action for which a filing fee is prescribed by the Act shall pay that fee at the time the petition is presented to the Clerk for filing.
- b) The types of petitions for which fees are required and the amount of those fees are as follows:
 - 1) PETITION FOR SITE-SPECIFIC REGULATION, \$75;
 - 2) PETITION FOR VARIANCE, \$75;
 - 3) PETITION FOR REVIEW OF PERMIT or any petition for review pursuant to Section 40 of the Act, \$75;
 - 4) PETITION TO CONTEST LOCAL GOVERNMENT DECISION PURSUANT TO SECTION 40.1 OF THE ACT, \$75; and
 - 5) PETITION FOR ADJUSTED STANDARD PURSUANT TO SECTION 28.1 OF THE ACT, \$75.

(Section 7.2 of the Act.)
- c) The Clerk will refuse to accept any petition which is not accompanied by the required fee. The fee must be paid in the form specified in Section 101.122.

Section 101.121 Photocopying Fees

- a) All files, records, and data may be copied at Board offices in Chicago UPON PAYMENT OF REASONABLE REPRODUCTION FEES TO BE DETERMINED BY THE BOARD.
(Section 7 of the Act.)
- b) The Board will contract for any copying that would impose a substantial administrative burden on the Board. The person requesting such copies will be charged the reproduction charges incurred by the Board.

- c) Requests for copies will be honored in as timely a manner as possible. Requests for copies by mail will be honored. However, the Board reserves the right to charge the requesting party for the mailing costs incurred by the Board.

Section 101.122 Forms Of Payment

- a) Filing fees and photocopying fees may be paid by cashier's check, money order, certified check, or personal check. Cash payments will be accepted, but are strongly discouraged.
- b) All checks and money orders shall be made payable to the Illinois Pollution Control Board.
- c) In the event that a check is not honored by petitioner's bank, the Board will enter a sanction order in that proceeding. Sanctions may include, but are not limited to, dismissal of the action for non-payment, or re-computation of any decision deadline to exclude the time in which the filing fee remains uncollected.

SUBPART C: SERVICE

Section 101.140 Applicability

This Subpart applies to all Board proceedings generally. However, to the extent that 35 Ill. Adm. Code 102 through 120 conflict with or supplement this Subpart, that more specific Part governs.

Section 101.141 Service Of Initial Filings

A copy of all initial filings in any Board proceeding shall be served upon all persons, required by this Subtitle to be served, or their registered agent. 35 Ill. Adm. Code 102 through 120 set forth more specifically who must be served in any given type of Board proceeding. Service of all initial filings shall be made personally, or by registered, certified, or First Class Mail, or by messenger service. However, initial complaints in enforcement proceedings pursuant to 35 Ill. Adm. Code 103 must be served personally, by registered or certified mail, or by messenger service.

Section 101.142 Service Of Subsequent Filings

After initial filings are served pursuant to Section 101.141, all subsequent filings shall be served personally, or by United States mail, or by messenger service.

Section 101.143 Proof Of Service

- a) Service of filings is proved by:
 - 1. In case of service by personal delivery, by certificate of the attorney, or affidavit of the person other than an attorney, who made delivery; or
 - 2. In case of service by messenger service, by messenger service receipt; or
 - 3. In case of service by registered or certified mail, by registered or certified mail receipt; or
 - 4. In case of service by First Class mail, by certificate of attorney, or affidavit of person other than attorney, which states the date, time, and place of mailing, the complete address which appeared on the envelope, and the fact that proper postage was prepaid.
- b) A sample certificate of service appears in Appendix E of this Part.

Section 101.144 Effective Date Of Service

- a) In the case of service by personal delivery, service is complete on the date of that personal delivery.
- b) In the case of service by registered or certified mail, or by messenger service, service is complete on the date specified on the registered or certified mail receipt or the messenger service receipt.
- c) There is a rebuttable presumption that service by First Class mail is complete four days after mailing.

SUBPART D: PUBLIC INFORMATION

Section 101.160 Public Information

- a) The Clerk will maintain files containing all information submitted to or produced by the Board or any of its members relating to matters within the Board's jurisdiction. Without limiting the foregoing, the files will include: pleadings, motions, notices, minutes, transcripts, exhibits, orders and opinions, proposed and adopted regulations, communications to or from the Board or any Board member, the Environmental Register and other Board releases, business records, informal complaints, and internal communications filed

at the request of any Board member with consent of the author of that communication.

- b) All files maintained by the Clerk will be open to reasonable public inspection and copying, except the following material:
 - 1) Internal communications between and among Board members and staff (except as provided in subsection(a));
 - 2) Material protected from public disclosure under the trade secret provisions of 35 Ill. Adm. Code 120; and
 - 3) Material which is stamped "Not Subject to Disclosure" by Board order, pursuant to Section 101.161.
- c) The Clerk shall maintain a list of all files open to public inspection.

Section 101.161 Non-Disclosable Information

- a) Only the following materials may be stamped "Not Subject to Disclosure" by the Board:
 - 1) INFORMATION WHICH CONSTITUTES A TRADE SECRET;
 - 2) INFORMATION PRIVILEGED AGAINST INTRODUCTION IN JUDICIAL PROCEEDINGS;
 - 3) INFORMATION CONCERNING SECRET MANUFACTURING PROCESSES OR CONFIDENTIAL DATA SUBMITTED BY ANY PERSON UNDER THE ACT; AND
 - 4) INCOME AND EARNINGS DATA WHEN NOT AN ISSUE IN THE PROCEEDING. (Section 7(a) of the Act.)
- b) Material will be stamped "Not Subject to Disclosure" only upon request of a Board member or upon written application at the time the material is filed. Procedures governing the identification and protection of trade secrets are found in 35 Ill. Adm. Code 120. An application for non-disclosure other than pertaining to trade secrets shall contain the following:
 - 1) Identification of the precise material, or parts of material, for which non-disclosure is sought;
 - 2) Indication of the particular non-disclosure category into which the material falls; and

- 3) A concise statement of the reasons for requesting non-disclosure. The application shall be verified and contain such data and information as will inform the Board of the nature of material for which non-disclosure is sought, the reasons why non-disclosure is necessary, and the number and title of all persons familiar with such information, and how long the material has been limited from disclosure.
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- c) A single copy of the material for non-disclosure shall be filed with the Clerk with the application and shall be available for examination only by Board members, Board assistants, Environmental Scientists of the Board's Scientific/Technical Section, the assigned hearing officer, the Clerk, and the Assistant Clerk. This material may also be made available to officers, employees, or authorized representatives of this State or the United States as provided in Section 7(e) of the Act. If any agency of this State or the United States is a participant in the proceeding in which the application for non-disclosure is made, said agency participants shall be served with a copy of the material and the application for non-disclosure and allowed seven (7) days from the date of such service to respond to the application. The Board will rule on the application and inform the applicant of its decision. Public inspection of the material for non-disclosure shall be barred until the application has been disposed of by the Board and the time for appeal has run. The Board may enter conditional non-disclosure orders allowing withdrawal by the applicant of the material covered by such order, at which time the Board's ruling on the application shall be based on the record excluding the material so withdrawn.

Section 101.162 Publications

- a) At least once each month, the Board will publish an Environmental Register containing reports of Board activities and notices of meetings and hearings. One copy will be sent to any person without charge, upon request.
- b) Copies of the Act and regulations in effect will be provided without charge, by mail and at the Board's Chicago office.
- c) The Board will regularly compile its decisions and orders into volumes, which subscribers may buy and receive by mail at a reasonable cost.

SUBPART E: BOARD MEETINGS

Section 101.180 Board Meetings

- a) All decisions of the Board will be made at meetings open to the public. Four members of the Board constitute a quorum. Four affirmative votes are required for any final determinations of the Board, except in a proceeding to remove a seal under Section 34(d) of the Act.
- b) THE BOARD WILL HOLD AT LEAST ONE MEETING EACH MONTH AND WILL ADOPT AT THE BEGINNING OF EACH CALENDAR OR FISCAL YEAR A SCHEDULE OF MEETINGS WHICH SHALL APPEAR AT LEAST ONCE IN ITS MINUTES AND IN THE ENVIRONMENTAL REGISTER. SPECIAL MEETINGS MAY BE CALLED BY THE CHAIRMAN OR BY ANY TWO BOARD MEMBERS UPON DELIVERY OF 24 HOURS WRITTEN NOTICE TO THE OFFICE OF EACH MEMBER. PUBLIC NOTICE OF ALL MEETINGS WILL BE GIVEN AT LEAST 24 HOURS IN ADVANCE OF EACH MEETING BY POSTING AT THE BOARD'S OFFICES. IN EMERGENCIES IN WHICH A MAJORITY OF THE BOARD CERTIFIES THAT EXIGENCIES OF TIME REQUIRE, THE REQUIREMENTS OF PUBLIC NOTICE AND 24 HOUR WRITTEN NOTICE TO MEMBERS MAY BE DISPENSED WITH, AND BOARD MEMBERS WILL RECEIVE SUCH NOTICE AS IS REASONABLE UNDER THE CIRCUMSTANCES. (Section 5 of the Act.)
- c) The Board will keep a complete and accurate record of all meetings including the votes of individual members on all adjudications and proposed regulations.
- d) No oral argument will be heard at any Board meeting, except by leave of the Board.

Section 101.181 Agenda For Board Meetings

Unless the Board determines that undue delay or material prejudice will result, no document received by the Clerk for filing after 4:30 p.m. two days before a scheduled Board meeting will be placed on the agenda for that Board meeting. Any such filing will appear on the agenda for the next regularly scheduled Board meeting.

SUBPART F: EX PARTE CONTACTS

Section 101.200 Ex Parte Contacts

- a) Contested Case Proceedings. No Board member, hearing officer, or employee of the Board shall communicate ex parte with any person not employed by the Board with respect to the substance of any contested case proceeding pending before the Board. Ex parte contacts with respect to individual pollution sources which may become the subject of such a proceeding are permissible to the extent that information so received is relevant to rulemaking proceedings, but caution shall be

exercised by Board members and employees to avoid prejudging the merits of any potential case.

- b) Non-contested Case Proceedings. Board members and employees should not permit ex parte contacts designed to influence his or her action in any regulatory proceeding after docketing and authorization of hearings. Whenever practicable, communications shall be in writing and addressed to the Board rather than to individual members.
- c) Nothing in this Section shall preclude Board members, hearing officers, or employees from receiving informal complaints about individual pollution sources, or forbid such administrative contacts as would be appropriate for judges and other judicial officers.

SUBPART G: HEARINGS

Section 101.220 Authority Of Hearing Officer

The hearing officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear, complete, and concise record. He or she shall have all powers necessary to these ends, including (but not limited to) the authority to:

- a) Require and establish a schedule for, and notice and distribution of, any prior submission of testimony and written exhibits and rebuttal testimony and exhibits;
- b) Require all participants to state their position with respect to the proposal;
- c) Administer oaths and affirmations;
- d) Examine witnesses and direct witnesses to testify;
- e) Regulate the course of the hearing, including but not limited to controlling the order of proceedings;
- f) Establish reasonable limits on the duration of the testimony and questioning of any witness and limit repetitious or cumulative testimony and questioning;
- g) Issue, in the name of the Board, an order compelling the answering of interrogatories or other discovery requests;
- h) Order the production of evidence;
- i) Initiate, schedule and conduct a pre-hearing conference;

- j) Issue subpoenas;
- k) Exclude late-filed briefs and comments from inclusion in the record for decision;
- l) Rule upon motions as specified in Section 101.247; and
- n) Rule upon objections and evidentiary questions.

Section 101.221 Hearing Decorum

- a) Hearings should be conducted with fitting dignity and decorum. Any person may record the proceedings by tape, film, or other means. The hearing officer may prescribe rules to govern such recordings. If the hearing officer determines that recording is disruptive or detrimental to proper development of the record, he or she may limit or prohibit recording. IF A WITNESS REFUSES TO TESTIFY ON THE GROUNDS THAT HE OR SHE MAY NOT BE COMPELLED TO TESTIFY IF ANY PORTION OF THE WITNESS' TESTIMONY IS TO BE BROADCAST OR TELEVISED OR IF MOTION PICTURES ARE TO BE TAKEN OF THE WITNESS WHILE THE WITNESS IS TESTIFYING, THE HEARING OFFICER WILL PROHIBIT SUCH RECORDING DURING THE TESTIMONY OF THE WITNESS. (Ill. Rev. Stat. 1987, ch. 102, par. 42.05.) The hearing officer shall make witnesses aware of this provision before the hearing begins.
- b) Participants in proceedings before the Board shall at all times conduct themselves with the same degree of dignity and respect that they would before a court.

SUBPART H: MOTION PRACTICE

Section 101.240 Applicability

This Subpart applies to all Board proceedings generally. However, to the extent that 35 Ill. Adm. Code 102 through 120 conflict with or supplement this Subpart, that more specific Part governs.

Section 101.241 Filing Of Motions And Responses

- a) All motions shall be in writing, unless made orally on the record during a hearing, and shall state whether directed to the Board or to the hearing officer. If the motion is directed to the Board, ten copies shall be filed with the Clerk. If the motion is directed to the hearing officer, three copies shall be filed with the Clerk and one copy served upon the hearing officer. All other participants shall be served pursuant to Section 101.142.

- b) Within 7 days after service of a motion, a participant or party may file a response to the motion. If no response is filed, such participant or party shall be deemed to have waived objection to the granting of the motion, but such waiver of objection does not bind the Board or the hearing officer in the decision of the motion. Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 7-day response period.
- c) The moving person shall not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice.

Section 101.242 Contents Of Motions And Responses

- a) All motions shall clearly state the reasons for and grounds upon which the motion is made and shall contain a concise statement of the relief sought. Facts asserted which are not of record in the proceeding shall be supported by affidavit. A brief may be included.
- b) All responses shall clearly state the position of the responding person and the reasons for that position. Facts asserted which are not of record in the proceeding shall be supported by affidavit. A brief may be included.

Section 101.243 Motions Attacking Jurisdiction Or Sufficiency Of The Pleadings

- a) All motions to strike or dismiss challenging the sufficiency of any document filed with the Board shall be filed within 21 days after the service of the challenged document, unless the Board determines that material prejudice would result. In the case of a regulatory proceeding, pursuant to 35 Ill. Adm. Code 102, however, such motions shall be filed within 30 days of the Board order formally accepting the regulatory proposal for hearing.
- b) All motions challenging the jurisdiction of the Board shall be filed prior to the filing of any other document by the moving participant or party, unless the Board determines that material prejudice will result. Such participant or party will be allowed to appear specially for the purpose of making such motion.
- c) A person may participate in a proceeding without waiving any jurisdictional objection if such objection is timely raised pursuant to subsection (b).

Section 101.244 Motions For Summary Judgment

A motion for summary judgment prior to hearing may be made by any party to an enforcement proceeding pursuant to Title VIII of the Act or a permit appeal pursuant to Title X of the Act. Specific rules for such motions for summary judgment are found in 35 Ill. Adm. Code 103 (enforcement proceedings) and 35 Ill. Adm. Code 105 (permit appeals).

Section 101.245 Motions Preliminary To Hearing

- a) All motions preliminary to hearing shall be presented to the Board or the hearing officer at least 21 days prior to the date of hearing, unless allowed by the Board or the hearing officer to prevent material prejudice. The Board or the hearing officer may direct that the scheduled hearing proceed during the pendency of the motion. The Board may defer ruling upon any motion until its decision on the merits of the case.
- b) No motion to continue a hearing in a proceeding with a deadline for Board action, as specified in the Act, will be granted unless the motion to continue is accompanied by a waiver of that decision deadline. The waiver shall conform with the requirements of Section 101.105.

Section 101.246 Motions For Reconsideration

- a) Any motion for reconsideration or modification of a final Board order shall be filed within 35 days of the adoption of the order.
- b) Any response to a motion for reconsideration or modification shall be filed within 14 days from the filing of the motion.
- c) A timely-filed motion for reconsideration or modification stays the effect of the final order until final disposition of the motion. The time for appeal of the Board order runs anew after the Board rules upon the motion unless otherwise provided.

Section 101.247 Disposition Of Motion

- a) The hearing officer may rule upon all motions except any motion to dismiss, motion to decide a proceeding on the merits, motion to strike any claim or defense for insufficiency or want of proof, motion claiming lack of jurisdiction, motion for consolidation, motion for summary judgment, or motion for reconsideration. The hearing officer will refer all such motions to the Board. If the hearing officer refuses to act upon any

motion, he or she will refer such motion to the Board within 5 days of the filing of any response.

- b) No interlocutory appeal of a motion may be taken to the Board from a ruling of the hearing officer, except by allowance of the Board after written motion. Notwithstanding, when in the judgment of the hearing officer immediate appeal of any order is necessary to prevent harm to the public interest or to avoid unusual delay or expense, the hearing officer may refer the ruling promptly to the Board and notify the participants. A continuing objection to a hearing officer ruling may be raised at the close of hearing and in post-hearing submissions.
- c) Unless otherwise ordered by the Board to prevent material prejudice, neither the filing of a motion, the certification of a question to the Board, nor any appeal to the Board of a hearing officer order shall stay the proceeding or extend the time for the performance of any act. All hearing officer orders shall remain in effect during the pendency of any appeal to the Board.

SUBPART I: DISCOVERY

Section 101.260 Subpoenas

- a) Upon request by any party or participant, the Clerk shall issue subpoenas for the attendance of witnesses at a hearing or deposition. Subpoenas may include a command to produce books, papers, documents, or other tangible things designated therein and relevant to the matter under consideration.
- b) Subpoena forms are available at the Board's Chicago office. The person requesting the subpoena is responsible for completing the subpoena and serving it upon the witness.
- c) If the witness is a non-resident of the state, the hearing officer or Board may order specific terms and conditions in connection with his or her appearance, including payment of the witness' reasonable expenses by the moving participant.
- d) A subpoena shall state the title of the action and shall command such person to whom it is directed to attend and give testimony at the time and place therein specified. A copy of the subpoena shall be filed with

the Clerk after service upon the witness and served upon the hearing officer.

- e) The hearing officer or the Board, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance, may quash or modify the subpoena if it is unreasonable or oppressive.
- f) Failure of any witness to comply with a Board subpoena shall subject the witness to sanctions under this Part, or to judicial enforcement of the subpoena. The Board may, upon proper motion by the participant or party requesting the subpoena, request the Attorney General to pursue such judicial enforcement of the subpoena on behalf of the Board.
- g) Each witness subpoenaed by a party or participant under this Section is entitled to receive witness fees from that party or participant as provided in Section 47 of "AN ACT concerning fees and salaries and to classify the several counties of this state with reference thereto." (Ill. Rev. Stat. 1987, ch. 53, par. 65).
- h) Any witness subpoenaed for a deposition may be required to attend only in the county in which he or she resides or transacts business, or in any other place ordered by the Board.

Section 101.261 Production Of Information

The hearing officer may at any time on his or her own motion, or on motion of any participant, or at the direction of the Board, order the production of information which is relevant to the matter under consideration. The hearing officer will deny, limit, condition or regulate the production of information when necessary to prevent material delay, expense, harassment, or oppression or to protect materials from disclosure consistent with the provisions of Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 101.161 and 120.

SUBPART J: SANCTIONS

Sections 101.280 Sanctions For Refusal To Comply With Procedural Rules, Board Orders, Or Hearing Officer Orders

If a party or any person unreasonably refuses to comply with any provision of 35 Ill. Adm. Code 101 through 120 or fails to comply with any order entered by the Board or the hearing officer, including any subpoena issued by the Board or hearing officer, the Board may order sanctions. In addition to remedies elsewhere specifically provided, the sanctions may include, among others, the following:

- a) That further proceedings be stayed until the order or rules are complied with, except where the non-complying party is the petitioner in a petition for variance or permit appeal, such proceeding shall be dismissed prior to the date on which decision is due;
- b) That the offending person be barred from filing any other pleading relating to any issue to which the refusal or failure relates;
- c) That the offending person be barred from maintaining any particular claim, counter claim, third-party complaint, or defense relating to that issue;
- d) That a witness be barred from testifying concerning that issue;
- e) That, as to claims or defenses asserted in any pleading to which that issue is material, a judgment by default be entered against the offending person or that the proceeding be dismissed with or without prejudice;
- f) That any portion of the offending person's pleadings relating to that issue be stricken and, if appropriate, judgment be entered as to that issue;
- g) That the offending person pay the amount of reasonable expenses incurred in obtaining an order pursuant to this Section.

Section 101.281 Sanctions For Abuse Of Discovery Procedures

The Board or the hearing officer may order that information obtained through abuse of discovery procedures be suppressed. If a person wilfully obtains or attempts to obtain information by an improper discovery method, wilfully obtains or attempts to obtain information to which he is not entitled, or otherwise abuses discovery rules, the Board may enter any order provided for in this Subpart.

SUBPART K: RELIEF FROM AND REVIEW OF FINAL ORDERS

Section 101.300 Motions for Reconsideration

Motions for reconsideration or modification of a final Board order shall be filed within 35 days of the order, pursuant to Section 101.246. Responses to such motions are also governed by Section 101.246.

Section 101.301 Relief From Final Orders

- a) Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or

omission may be corrected by the Board at anytime on its own initiative or on the motion of any party and after such notice, if any, as the Board orders. Such mistakes may be so corrected by the Board before any appeal is docketed in the appellate court. Thereafter, while the appeal is pending, such mistakes may be corrected with leave of the appellate court.

- b) On written motion, the Board may relieve a party from a final order, for the following:
 - 1) Newly discovered evidence which existed at the time of hearing and which by due diligence could not have been timely discovered; or
 - 2) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or
 - 3) Void order, such as an order based upon jurisdictional defects.
- c) A motion under this Section does not affect the finality of a Board order or suspend the operation of a Board order. The motion must be filed in the same proceeding in which the order was entered but is not a continuation of the proceeding. The motion must be supported by affidavit or other appropriate showing as to matters not of record. All parties to the motion shall be notified as provided by Section 101.141(a).
- d) A motion under subsection (b) shall be filed with the Board within one year after entry of the order except that a motion pursuant to subsection (b)(3) shall be filed within a reasonable time after entry of the order.
- e) Any response to a motion under this Section shall be filed within 14 days of the filing of the motion.

Section 101.302 Judicial Review Of Final Board Orders

- a) Judicial review of final Board orders shall be pursuant to Sections 29 and 41 of the Act (Ill. Rev. Stat. 1987, ch. 111 1/2, pars. 1029 and 1041), Rule 335 of the Rules of the Supreme Court of Illinois (Ill. Rev. Stat. 1987, ch. 110A, par. 335) and the Administrative Review Law (Ill. Rev. Stat. 1987, ch. 110, pars. 3-101 et seq.)
- b) For purposes of judicial review, Board action becomes final upon adoption of the Board's final order in a proceeding, or upon subsequent Board action if any

motion for reconsideration is filed pursuant to Section 101.246.

Section 101.303 Stay Procedures

The procedure for stay of any Board order during appeal shall be as provided in Rule 335 of the Rules of the Supreme Court of Illinois.

Section 101.304 Interlocutory Appeals

- a) When the Board, in making an interlocutory order not otherwise appealable, finds pursuant to Rule 308 of the Rules of the Supreme Court of Illinois (Ill. Rev. Stat. 1987, ch. 110A, par. 308) that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the Board may so state in writing, identifying the question of law involved, on its own motion or on motion of any party.
- b) Appeal of such interlocutory order by the Board shall be in accordance with Rule 308 of the Supreme Court of Illinois.

Appendix A Captions

Illustration A General Rulemaking

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
 REVISION OF THE FLUORIDE)
 DRINKING WATER STANDARD:) (Rulemaking)
 AMENDMENTS TO 35 ILL. ADM.)
 CODE XXX.XXX)

Illustration B Site-specific Rulemaking

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
 PETITION OF ABC COMPANY FOR) R
 SITE-SPECIFIC AIR REGULATION:) (Site-Specific 35 ILL.
 ADM. XXX.XXX) Rulemaking)

Illustration C Adjusted Standard Petition

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
 PETITION OF ABC COMPANY (AND) AS
 THE ILLINOIS ENVIRONMENTAL) (Adjusted standard)
 PROTECTION AGENCY) FOR ADJUSTED)
 STANDARD FROM 35 ILL. ADM. CODE)
 XXX.XXX)

Illustration D Permit Appeal Or Variance

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ABC COMPANY,)	
)	
Petitioner,)	
)	
v.	)	PCB
ILLINOIS ENVIRONMENTAL	)	(Permit appeal or
PROTECTION AGENCY,	)	Variance)
)	
Respondent.)	

Illustration E Enforcement Case

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY, (or OTHER)	
PERSON'S NAME),)	
)	
Complainant,)	
)	
v.	)	PCS
	)	(Enforcement)
ABC COMPANY,)	
)	
Respondent.)	

Illustration F Administrative Citation

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY (or UNIT OF)	
LOCAL GOVERNMENT),)	
)	
Complainant,)	
)	
v.	)	AC-
ABC COMPANY,	)	(Administrative Citation)
	)	IEPA Number
Respondent.)	

Appendix B Appearance Form

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

APPLICABLE CAPTION)	
(see Appendix A))	
)	
	)	docket number
)	
)	
)	

APPEARANCE

I hereby file my appearance in this proceeding, on behalf of ABC Company.

Attorney's Name

Name of Attorney and Firm
Address
Telephone Number

Appendix C Withdrawal Of Appearance Form

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

APPLICABLE CAPTION)	
(see Appendix A))	
)	
	)	docket number
)	
)	
)	

NOTICE OF WITHDRAWAL OF APPEARANCE

I hereby give notice of withdrawal of my appearance as representative of ABC Company in this proceeding.

Attorney's Name

Name of Attorney and Firm
Address
Telephone Number

Appendix D Notice of Filing

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

APPLICABLE CAPTION
(see Appendix A)

)
)
)
)
)
)
)
)
)
)

docket number

NOTICE OF FILING

TO: (List all persons served.)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the [specify what document was filed] of [name of persons filing the document], a copy of which is herewith served upon you.

Date

Name of Attorney or Other Representative

Name

Address

Telephone Number

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

PART 106
HEARINGS PURSUANT TO SPECIFIC RULES

SUBPART G: ADJUSTED STANDARDS

<u>Section</u>	
<u>106.701</u>	<u>Applicability</u>
<u>106.702</u>	<u>Definitions</u>
<u>106.703</u>	<u>Joint or Single Petition</u>
<u>106.704</u>	<u>Request to Agency to Join As Co-Petitioner</u>
<u>106.705</u>	<u>Petition Contents</u>
<u>106.706</u>	<u>Petition Verification</u>
<u>106.707</u>	<u>Federal Procedural Requirements</u>
<u>106.708</u>	<u>Incorporated Material</u>
<u>106.709</u>	<u>Motions</u>
<u>106.710</u>	<u>Proof of Service</u>
<u>106.711</u>	<u>Petition Notice</u>
<u>106.712</u>	<u>Proof of Petition Notice</u>
<u>106.713</u>	<u>Request for Public Hearing</u>
<u>106.714</u>	<u>Agency Response</u>
<u>106.801</u>	<u>Hearing Scheduled</u>
<u>106.802</u>	<u>Hearing Notice</u>
<u>106.803</u>	<u>Pre-Hearing Submission of Testimony and Exhibits</u>
<u>106.804</u>	<u>Production of Information</u>
<u>106.805</u>	<u>Admissible Evidence</u>
<u>106.806</u>	<u>Order of Hearing</u>
<u>106.807</u>	<u>Post-hearing Comments</u>
<u>106.808</u>	<u>Burden of Proof</u>
<u>106.901</u>	<u>Board Deliberations</u>
<u>106.902</u>	<u>Dismissal of Petition</u>
<u>106.903</u>	<u>Board Decision</u>
<u>106.904</u>	<u>Opinion and Order</u>
<u>106.905</u>	<u>Appeal of Board Decisions</u>
<u>106.906</u>	<u>Publication of Adjusted Standards</u>
<u>106.907</u>	<u>Effect of Filing a Petition</u>

Appendix A Old Rule Numbers Referenced

28.1 and authorized by Section 26 of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111^{1/2}, pars. 1005, 1014.2(c), 1022.4, 1027, 1028, 1028.1 and 1026).

SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, page 186, effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg. 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4, 1987; amended in R82-1 at Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5 at Ill. Reg. , effective

person to submit to the Agency any background information in the person's possession relevant to the adjusted standard which is sought. The Agency shall notify the person in writing of its determination either to join as a co-petitioner, or to decline to join as a co-petitioner. If the Agency declines to join as a co-petitioner, the Agency shall state the basis for this decision.

- c) Decisions made by the Agency pursuant to this Section are not appealable to the Board.
- d) Subsequent to the filing of the petition and prior to hearing, the Board grant the Agency co-petitioner status upon joint motion of the Agency and the petitioner who originally filed the petition.

(Source: Added at Ill. Reg. ,
effective)

Section 106.705 Petition Contents

The petition shall be captioned in accordance with the applicable requirements of 35 Ill. Adm. Code 101. Appendix A. If the Agency is a co-petitioner, the petition shall so state. The petition shall contain headings corresponding to the informational requirements of each subsection of this Section. The following information shall be contained in the petition:

- a) A statement describing the standard from which an adjusted standard is sought. This shall include the Administrative Code citation to the regulation of general applicability imposing the standard as well as the effective date of that regulation.
- b) A statement which indicates whether the regulation of general applicability was promulgated to implement, in whole or in part, the requirements of the Clean Water Act, Safe Drinking Water Act, Comprehensive Environmental Response, Compensation and Liability Act, Clean Air Act, or the State programs concerning Resource Conservation and Recovery Act (RCRA), Underground Injection Control (UIC), or National Pollutant Discharge Elimination System (NPDES).
- c) The level of justification for adjusted standards specified by the regulation of general applicability or statement that the regulation of general applicability does not specify a level of justification;
- d) A description of the nature of the petitioner's activity which is the subject of the proposed adjusted standard. The description shall include the location of and area affected by the petitioner's activity. This

description shall also include the number of persons employed by the petitioner's facility at issue, age of that facility, relevant pollution control equipment already in use, and the qualitative and quantitative nature of emissions, discharges or releases currently generated by the petitioner's activity;

- e) A description of the efforts which would be necessary if the petitioner were to comply with the regulation of general applicability. All compliance alternatives, with the corresponding costs for each alternative, shall be discussed. The discussion of costs shall include the overall capital costs as well as the annualized capital and operating costs.
- f) A narrative description of the proposed adjusted standard as well as proposed language for a Board order which would impose the standard. Efforts necessary to achieve this proposed standard and the corresponding costs shall also be presented. Such cost information shall include the overall capital cost as well as the annualized capital and operating costs;
- g) The quantitative and qualitative impact of the petitioner's activity on the environment if the petitioner were to comply with the regulation of general applicability as compared to the quantitative and qualitative impact on the environment if the petitioner were to comply only with the proposed adjusted standard. To the extent applicable, cross-media impacts shall be discussed. For the purposes of this Section, cross-media impacts shall mean impacts which concern environmental subject areas other than those addressed by the regulation of general applicability and the proposed adjusted standard. Also, the petitioner shall compare the qualitative and quantitative nature of emissions, discharges or releases which would be expected from compliance with the regulation of general applicability as opposed to that which would be expected from compliance with the proposed adjusted standard;
- h) A statement which explains how the petitioner seeks to justify, pursuant to the applicable level of justification, the proposed adjusted standard;
- i) A statement with supporting reasons that the Board may grant the proposed adjusted standard consistent with federal law. The petitioner shall also inform the Board of all procedural requirements applicable to the Board's decision on the petition which are imposed by federal law and not required by this Subpart. Relevant regulatory and statutory authorities shall be cited;

- j) A statement requesting or waiving a hearing on the petition; and
- k) The petition shall cite to supporting documents or legal authorities whenever such are used as a basis for the petitioner's proof. Relevant portions of such documents and legal authorities other than Board decisions, State regulations, statutes, and reported cases shall be appended to the petition.
- l) If any informational requirement prescribed by subsections (a) through (k) is determined by the petitioner to be either not applicable or unduly burdensome, the petitioner need not fulfill that informational requirement in the petition which is initially filed, provided that an explanation detailing the rationale for such a determination and the determination itself is set forth in the appropriate portion of the petition. Notwithstanding this provision, the Board may require the petitioner to amend its petition to fully comply with informational requirements set forth by this Section or to provide the Board with additional material which will aid the Board in its resolution of the adjusted standard proceeding.

(Source: Added at Ill. Reg. ,
effective)

Section 106.706 Petition Verification

All material facts asserted within the petition shall be verified by affidavits. Such affidavits shall be filed with the petition.

(Source: Added at Ill. Reg. ,
effective)

Section 106.707 Federal Procedural Requirements

It shall be the duty of the petitioner to ensure compliance with any procedural requirements identified pursuant to Section 106.705(i) to the extent that such requirements do not require Board action.

(Source: Added at Ill. Reg. ,
effective)

Section 106.708 Incorporated Material

Incorporation of material from the record of another Board docket shall be accomplished in accordance with 35 Ill. Adm. Code 101.106.

(Source: Added at Ill. Reg. ,
effective)

Section 106.709 Motions

The filing of motions and responses to motions shall be conducted in accordance with 35 Ill. Adm. Code 101.Subpart H.

(Source: Added at Ill. Reg. ,
effective)

Section 106.710 Service of Filings

All filings in an adjusted standard proceeding shall be served upon the petitioner, the Agency, and the ENR as well as other persons as required by the Board or Hearing Officer. Proof of such service shall accompany each filing and shall be of the form as prescribed by 35 Ill. Adm. Code 101.143.

(Source: Added at Ill. Reg. ,
effective)

Section 106.711 Petition Notice

- a) WITHIN FOURTEEN DAYS AFTER THE FILING OF A PETITION, THE PETITIONER SHALL CAUSE, at its own expense, THE PUBLICATION OF A NOTICE BY ADVERTISEMENT IN A NEWSPAPER OF GENERAL CIRCULATION IN THE AREA LIKELY TO BE AFFECTED by the petitioner's activity which is the subject of the adjusted standard proceeding. (Section 28.1 of the Act, Ill. Rev. Stat. 1987, ch.111¹/₂, par. 1028.1). The title of the notice shall be in the form as follows: "Notice of Petition by [petitioner's name] for an Adjusted Standard before the Illinois Pollution Control Board."
- b) The notice shall contain the name and address of the petitioner and the statement that the petitioner has filed with the Illinois Pollution Control Board a petition for an adjusted standard. The notice shall also provide the date upon which the petition was filed, the Board docket number, the regulatory standard (with appropriate Administrative Code citation) from which an adjusted standard is sought, the proposed adjusted standard, and a general description of the petitioner's activity which is the subject of the adjusted standard proceeding, and the location of that activity. This information shall be presented so as to be understood in accordance with the context of this Section's requirements. The concluding portion of the notice shall read as follows:

"Any person may cause a public hearing to be held in the above-described adjusted standard proceeding by filing a

hearing request with the Illinois Pollution Control Board within 21 days after the date of the publication of this notice. The hearing request should clearly indicate the docket number for the adjusted standard proceeding, as found in this notice, and shall be mailed to the Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph, Suite 11-500, Chicago, Illinois 60601."

- c) Subsequent to the filing of a petition, the Board will publish notice in the Environmental Register that it has received a petition for an adjusted standard. The notice will include the petitioner's name, filing date, and a brief narrative description of the proposed adjusted standard as well as the standard imposed by the regulation of general applicability (accompanied by the appropriate Administrative Code Citation) from which the adopted standard is sought. The notice will inform the public that any person may cause a public hearing to be held by filing a request with the Clerk of the Board not later than 21 days after the date the petition is filed in accordance with Section 106.713.

(Source: Added at Ill. Reg. ,
effective)

Section 106.712 Proof of Petition Notice

Within 30 days after the filing of the petition, the petitioner shall file a certificate of publication, issued by the publisher of the petition notice certifying the publication of that notice. The certificate shall be issued in accordance with Section 1 of "AN ACT to revise the law in relation to notices" (Ill. Rev. Stat. 1987, ch.100, par. 1).

(Source: Added at Ill. Reg. ,
effective)

Section 106.713 Request for Public Hearing

Any person may request that a public hearing be held in an adjusted standard proceeding. Such requests shall be filed not later than 21 days after the date of the publication of the petition notice in accordance with Section 106.711. Requests for hearing should make reference to the Board docket number assigned to the proceeding.

(Source: Added at Ill. Reg. ,
effective)

Section 106.714 Agency Response

- a) The Agency shall file a response not later than 30 days after the filing of a petition, if the Agency is not a co-petitioner to the petition. The response shall recommend either a grant or denial of the proposed adjusted standard, and it shall set forth rationale which supports the Agency's conclusion. In its response, the Agency may present any information which the Agency believes is relevant to the Board's consideration of the proposed adjusted standard. If the Agency recommends a denial of the petition due to informational deficiencies within the petition, the response shall identify the types of information needed to correct the deficiencies.
- b) At a minimum, the Agency shall address and respond to the petition with respect to each issue raised by the requirements of subsections (a) through (j) of Section 106.705.
- c) The recommendation shall cite to supporting documents or legal authorities whenever such are used as a basis for the Agency's conclusion. Relevant portions of such documents and legal authorities other than Board decisions, State regulations, statutes and reported cases shall be appended to the recommendation if not already in the record of the proceeding.

(Source: Added at Ill. Reg. ,
effective)

Section 106.801 Hearing Scheduled

- a) The Board will assign a hearing officer to an adjusted standard proceeding when:
 - 1) The Board receives a hearing request, pursuant to Section 106.713, not later than 21 days after the date of the publication of the petition notice in accordance with Section 106.111; or
 - 2) The Board IN ITS DISCRETION DETERMINES THAT A HEARING WOULD BE ADVISABLE. (Section 28.1 of the Act). Such a determination need not be evidenced by a Board opinion or order.
- b) The hearing officer will set a time and place for the hearing. The hearing officer may consult with the petitioner and the Agency prior to the scheduling of a hearing. Hearings are to be held in the county LIKELY TO BE AFFECTED by the petitioner's activity which is the subject of the proposed adjusted standard. (Section 28.1 of the Act).

- c) After the hearing has been scheduled, the hearing officer will notify the Clerk, petitioner, Agency, ENR and any person who has filed a timely hearing request of the time and place of the hearing.

(Source: Added at Ill. Reg. ,
effective)

Section 106.802 Hearing Notice

After receiving notification from the hearing officer pursuant to Section 106.801(c), the Clerk shall cause the publication of a hearing notice BY ADVERTISEMENT IN A NEWSPAPER OF GENERAL CIRCULATION in the county in which the hearing is to be held. SUCH NOTICE SHALL BE PUBLISHED AT LEAST 20 DAYS BEFORE THE DATE OF THE HEARING. (Section 28.1 of the Act).

(Source: Added at Ill. Reg. ,
effective)

Section 106.803 Pre-hearing Submission of Testimony and Exhibits

- a) The hearing officer may require the pre-hearing submission of testimony and exhibits which are to be presented at hearing. Consistent with the petitioner's burden of proof, the hearing officer may provide differing filing deadlines with respect to submissions of different persons. Pursuant to hearing officer order, rebuttal testimony and exhibits may be submitted prior to hearing. When such pre-hearing submission is required, an original and four (4) copies of each testimony and each exhibit shall be filed with the Board. The Agency, petitioner, ENR and any other person as required by the hearing officer shall each be served with one copy of each testimony and exhibit. Such service shall be initiated on or before the date that copies are filed with the Board. All testimony and exhibits shall be bound and labeled with the docket number of the proceeding, the name of the witness submitting the material or exhibit, and the title of the material or exhibit.
- b) Testimony submitted prior to hearing will be entered into the record as if read, unless the hearing officer determines that it will aid public understanding to have the testimony read. All persons testifying will be sworn and will be subject to examination. Modifications to previously submitted testimony and exhibits may be allowed by the hearing officer at hearing provided that such modifications are either non-substantive in nature or would not materially prejudice another person's

participation at hearing. Objections to such modifications are waived unless raised at hearing.

- c) If pre-hearing submission of testimony is required, any testimony which is not filed prior to hearing pursuant to subsection (a) will be allowed only as time permits.

(Source: Added at Ill. Reg. ,
effective)

Section 106.804 Production of Information

The production of information will be accomplished pursuant to the procedures set forth by 35 Ill. Adm. Code 101.261.

(Source: Added at Ill. Reg. ,
effective)

Section 106.805 Admissible Evidence

- a) The hearing officer shall receive evidence which is admissible under the rules of evidence and privilege as applied in the courts of Illinois pertaining to civil actions except as this Section otherwise provides. The hearing officer may admit evidence which is not admissible under such rules if it is relevant and would be relied upon by reasonably prudent persons in the conduct of their affairs.
- b) When the admissibility of evidence depends upon an arguable interpretation of substantive law, the hearing officer shall admit such evidence.
- c) The hearing officer may order the record or any portion thereof of any relevant pending or prior proceeding before the Board or part thereof incorporated into the record of the present proceeding, in accordance with Section 106.708.
- d) Relevant scientific or technical articles, treatises or materials may be introduced into evidence subject to refutation or disputation through any introduction of comparable documentary evidence or expert testimony.
- e) Any person may testify at hearing provided that she or he is sworn and subject to cross-examination. Cross-examination of any person who presents testimony may be conducted by any person. The hearing officer may limit such testimony and cross-examination pursuant to 35 Ill. Adm. Code 101.220.
- f) Information received at hearing will only be considered as substantive evidence in the Board's deliberations if

it is presented as an exhibit or direct testimony, or if it is elicited from a a person under cross-examination. The Board will not consider, as substantive evidence, information which is presented in the form of a question during cross-examination.

(Source: Added at Ill. Reg. ,
effective)

Section 106.806 Order of Hearing

The following shall be the order of an adjusted standard hearing subject to modification by the hearing officer for good cause:

- a) Presentation, argument, and disposition of motions preliminary to a hearing on the merits of matters raised by the petition and Agency response;
- b) Presentation of opening statements by petitioner, Agency, and any interested person;
- c) Testimony and exhibits by petitioner;
- d) Testimony and exhibits by Agency;
- e) Testimony and exhibits by interested persons;
- f) Testimony and exhibits by petitioner in rebuttal. This portion of the petitioner's case is limited to the rebutting of evidence presented by the Agency or any interested person during that part of the hearing described by subsections (d) and (e).
- g) Presentation and argument of all motions to be disposed of by the Board;
- h) Presentation of closing statements by the petitioner, Agency, and any interested person; and
- i) A schedule for the submission of post-hearing comments to the Board.

(Source: Added at Ill. Reg. ,
effective)

Section 106.807 Post-hearing Comments

The petitioner, Agency, ENR and any interested person may file post-hearing comments. The hearing officer may order any person to file such comments. Post-hearing comments shall be filed

within fourteen (14) days after the close of the last hearing unless the hearing officer specifies a different date for submission of post-hearing comments. Consistent with the petitioner's burden of proof, the hearing officer may provide for differing filing deadlines with respect to post-hearing comments by different persons. Pursuant to hearing officer order, rebuttal post-hearing comments may be submitted. All post-hearing comments shall present arguments or comments based only on information contained in the record. Such comments may also present legal argument citing legal authorities. The Board will not consider any new information presented by post-hearing comments.

(Source: Added at Ill. Reg. ,
effective)

Section 106.808 Burden of Proof

The burden of proof in an adjusted standard proceeding is on the petitioner.

(Source: Added at Ill. Reg. ,
effective)

Section 106.901 Board Deliberations

In making its decision on an adjusted standard petition, the Board shall consider only the record of the adjusted standard proceeding.

(Source: Added at Ill. Reg. ,
effective)

Section 106.902 Dismissal of Petition

The Board may at any time dismiss a petition for any of the following reasons:

- a) The Board DETERMINES THAT THE PETITION IS FRIVOLOUS, DUPLICATIVE, or deficient with respect to the requirements of Section 106.705, 106.706, 106.710, and 106.712 (Section 28.1 of the Act); or
- b) The Board DETERMINES THAT THE PETITIONER IS NOT PURSUING DISPOSITION OF THE PETITION IN A TIMELY MANNER. (Section 28.1 of the Act).

(Source: Added at Ill. Reg. ,
effective)

Section 106.903 Board Decision

A PETITIONER MUST JUSTIFY AN ADJUSTED STANDARD CONSISTENT WITH SUBSECTION (A) OF SECTION 27 OF THE ACT. (Section 28.1 of the Act.)

- a) IF THE REGULATION OF GENERAL APPLICABILITY DOES NOT SPECIFY A LEVEL OF JUSTIFICATION FOR AN ADJUSTED STANDARD, THE BOARD MAY ADOPT THE PROPOSED ADJUSTED STANDARD IF THE PETITIONER PROVES (Section 28.1 of the Act) that:
 - 1) FACTORS RELATING TO THAT PETITIONER ARE SUBSTANTIALLY AND SIGNIFICANTLY DIFFERENT FROM THE FACTORS RELIED UPON BY THE BOARD IN ADOPTING THE GENERAL REGULATION APPLICABLE TO THAT PETITIONER (Section 28.1 of the Act);
 - 2) THE EXISTENCE OF THOSE FACTORS JUSTIFIES AN ADJUSTED STANDARD (Section 28.1 of the Act);
 - 3) THE REQUESTED STANDARD WILL NOT RESULT IN ENVIRONMENTAL OR HEALTH EFFECTS SUBSTANTIALLY AND SIGNIFICANTLY MORE ADVERSE THAN THE EFFECTS CONSIDERED BY THE BOARD IN ADOPTING THE RULE OF GENERAL APPLICABILITY (Section 28.1 of the Act); AND
 - 4) THE ADJUSTED STANDARD IS CONSISTENT WITH ANY APPLICABLE FEDERAL LAW (Section 28.1 of the Act).
- b) If the regulation of general applicability specifies a level of justification for an adjusted standard, the Board may adopt the proposed adjusted standard, if the petitioner proves the level of justification specified by the regulation of general applicability.
- c) IF THE REGULATION OF GENERAL APPLICABILITY IMPLEMENTS IN WHOLE OR IN PART THE REQUIREMENTS OF THE CLEAN AIR ACT, THE BOARD WILL ADOPT EITHER (Section 28.1 of the Act):
 - 1) The proposed adjusted standard if the petitioner proves the applicable level of justification; or
 - 2) A STANDARD THE SAME AS THAT IMPOSED BY THE REGULATION OF GENERAL APPLICABILITY, if the petitioner fails to prove the applicable level of justification. (Section 28.1 of the Act).
- d) In adopting adjusted standards THE BOARD MAY IMPOSE SUCH CONDITIONS AS MAY BE NECESSARY TO ACCOMPLISH THE PURPOSES OF THE ACT (Section 28.1 of the Act).

(Source: Added at Ill. Reg. ,
effective)

Section 106.904 Opinion and Order

The Board shall issue a written opinion and order which sets forth the Board's decision and supporting rationale. Such opinions and orders SHALL BE MAINTAINED FOR PUBLIC INSPECTION BY THE CLERK OF THE BOARD. (Section 28.1).

(Source: Added at Ill. Reg. ,
effective)

Section 106.905 Appeal of Board Decisions

ANY FINAL ORDER OR DETERMINATION OF THE BOARD IN AN ADJUSTED STANDARD PROCEEDING MAY BE APPEALED TO THE APPELLATE COURT PURSUANT TO SECTION 41 OF THE ACT. (Section 28.1 of the Act).

(Source: Added at Ill. Reg. ,
effective)

Section 106.906 Publication of Adjusted Standards

- a) Subsequent to the Board's adoption of an adjusted standard, the Board will publish, in the Environmental Register, the name of the petitioner, date of the Order which adopted the adjusted standard, and a brief narrative description of the adopted adjusted standard.
- b) THE BOARD SHALL CAUSE THE PUBLICATION OF A LISTING OF ALL DETERMINATIONS MADE PURSUANT TO SECTION 28.1 OF THE ACT IN THE ILLINOIS REGISTER AND THE ENVIRONMENTAL REGISTER AT THE END OF EACH FISCAL YEAR. (Section 28.1 of the Act).

(Source: Added at Ill. Reg. ,
effective)

Section 106.907 Effect of Filing a Petition

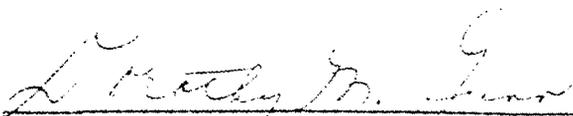
- a) IF ANY PERSON FILES A PETITION FOR AN INDIVIDUAL ADJUSTED STANDARD IN LIEU OF COMPLYING WITH THE APPLICABLE REGULATION WITHIN 20 DAYS AFTER THE EFFECTIVE DATE OF THE REGULATION, THE OPERATION OF THE REGULATION SHALL BE STAYED AS TO SUCH PERSON PENDING THE DISPOSITION OF THE PETITION; PROVIDED, HOWEVER, THAT THE OPERATION OF ANY REGULATION SHALL NOT BE STAYED IF THAT REGULATION WAS ADOPTED BY THE BOARD TO IMPLEMENT, IN WHOLE OR IN PART, THE REQUIREMENTS OF THE FEDERAL CLEAN AIR ACT, SAFE DRINKING WATER ACT OR COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, OR THE STATE RCRA, UIC OR NPDES PROGRAMS. (Section 28.1 of the Act).

b) WITHIN 20 DAYS AFTER THE EFFECTIVE DATE OF ANY REGULATION THAT IMPLEMENTS IN WHOLE OR IN PART THE REQUIREMENTS OF THE CLEAN AIR ACT, IF ANY PERSON FILES A PETITION FOR AN INDIVIDUAL ADJUSTED STANDARD IN LIEU OF COMPLYING WITH THE REGULATION, SUCH SOURCE WILL BE EXEMPT FROM THE REGULATION UNTIL THE BOARD MAKES A FINAL DETERMINATION ON THE PETITION. IF THE REGULATION ADOPTED BY THE BOARD FROM WHICH THE INDIVIDUAL ADJUSTED STANDARD IS SOUGHT REPLACES A PREVIOUSLY ADOPTED BOARD REGULATION, THE SOURCE SHALL BE SUBJECT TO THE PREVIOUSLY ADOPTED BOARD REGULATION UNTIL FINAL ACTION IS TAKEN BY THE BOARD ON THE PETITION. (Section 28.1 of the Act).

(Source: Added at Ill. Reg. ;
effective)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 17th day of January, 1989, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board